

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Division of Workers' Compensation Regulatory Action Pursuant to Workers' Compensation Reform Legislation

Assembly Bill 749

The following Labor Code sections were modified by the passage of AB 749:

Labor Code	Original Mandate/Tasks	Current Status per DWC
127.6	<p><u>Medical Study</u></p> <p>Administrative Director (AD), in consultation with the Commission on Health & Safety & Workers' Compensation (CHSWC) and other state agencies, to conduct a study of medical treatment provided to injured workers. Study to begin by July 1, 2003, report and recommendations by July 1, 2004.</p>	<p>This study is important for long-term system savings. The study encompasses the directive from Assembly Bill (AB) 749 and the utilization study from Senate Bill (SB) 228. The state contract freeze exemption approval has been granted by Finance.</p> <p>The contract has been awarded to the RAND Corporation to conduct the study. Final report on treatment guidelines were submitted to the Division of Workers' Compensation (DWC) in November 2004.</p>
129.5	<p><u>Audit Unit Procedures/Penalties</u></p> <p>AD to revise audit program to establish new system of profile audit review (PAR) of each adjusting location of California workers' compensation claims at least once every five years. Audit subjects who pass the PAR pay unpaid compensation found, but are not assessed penalties. Audit subjects that do not pass are subject to a full compliance audit (FCA). New penalty factor is established based on size of adjusting location, with penalties as high as \$40,000 for the most serious violations.</p>	<p>Regulations adopted effective January 1, 2003.</p>
138.4	<p><u>Benefit Notices to Employees from Claims Administrators</u></p> <p>The regulations need to be revised to reflect changes in this statute.</p>	<p>Review of notices and drafting of changes have commenced. Formal rulemaking will be initiated in 2005.</p>

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139.47	<u>Return to Work</u> Department of Industrial Relations (DIR) Director to establish a program to encourage early and sustained return to work, including creation of educational materials.	Initial meetings with public were held in April 2002 and July 15, 2002. Reimbursement program for injuries after July 1, 2004, is subject to funding from Labor Code Section 5814.6 penalties or funds transferred from the Workers' Compensation Administration Revolving Fund (WCARF) by the AD in accordance with rules to be adopted. (SB 899)
139.48 139.49	<u>Return-to-Work Reimbursement Program / Study</u>	
3201.5 3201.7 3201.9	<u>Carve-out</u> AD to collect data regarding collectively bargained carve-out programs. By June 30, 2004, and annually thereafter, AD to report claim statistics to Legislature; by July 1, 2004, and annually, AD to report number of collective bargaining agreements (CBAs) and number of employees covered to DIR Director.	Consolidated with "carve-out" rulemaking for SB 228 changes. Adopted as emergency regulation effective April 22, 2004. Permanent regulation adopted effective October 4, 2004.
3550 3551	<u>Posting Notices</u> AD to prescribe the form and content of compensation notices required to be posted by employers "in a conspicuous location frequented by employees"; notice must be available in Spanish. Time-of-Hire Pamphlet	Notice of Proposed Rulemaking in May 2003, hearing July 2003. Notice of modified proposal and 15-day comment period to incorporate SB 899 changes completed May 20, 2004. Completed rulemaking file submitted to Office of Administrative Law (OAL) on May 21, 2004, approved by OAL and submitted to Secretary of State. Regulations effective August 1, 2004.
3822	<u>Fraud Notice (annual to every employer, claims adjuster, third-party administrator, physician, and attorney participating in Workers' Compensation)</u>	Fraud notices were mailed to all claims administrators in June of 2004. Mailings to the other specified groups will take place by early 2005.
4062.9	<u>Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors</u>	Have initiated discussions with University of California San Francisco (UCSF) to obtain assistance.

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4600.2	<u>Pharmacy Contract Standards</u>	Contracted with UCSF Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March. Regulations are being drafted, and rulemaking will commence in 2005.
4603.4	<u>Standardized Medical Billing Forms and Electronic Billing</u>	Pre-Rulemaking Public Meetings held in June, July, August and October 2004 to be followed by Notice of Rulemaking in early 2005.
5401	<u>Claim Form and Notice of Potential Eligibility for Benefits</u>	Same as Posting Notice

Assembly Bill 227 and Senate Bill 228 – Fee Schedules

The following Labor Code sections pertaining to fee schedules were modified by the passage of AB 227 and SB 228:

Labor Code	Original Mandate/Tasks	Current Status per DWC
5307.1	<p><u>Physician Fee Schedule</u></p> <p>Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent.</p> <p>As of January 1, 2006, the AD will have the authority to adopt an OMFS for physician services.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004, to carry out the physician schedule that is to remain in place for calendar years 2004/2005. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004 • Working on clean-up regulations to be adopted on emergency basis in October 2004.

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Labor Code	Original Mandate/Tasks	Current Status per DWC
5307.1	<p><u>Inpatient Facility Fee Schedule</u></p> <p>AD to adopt an inpatient facility fee schedule for inpatient hospital care based on the Medicare fee plus 20 percent.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004. • Order issued October 13, 2004, to update the Inpatient Hospital Fee Schedule effective for discharges on or after November 29, 2004, to conform to Medicare rate changes.
5307.1	<p><u>Outpatient Facility Fee Schedule</u></p> <p>AD to adopt a new fee schedule for hospital outpatient departments and ambulatory surgery centers based on the Medicare fee for hospital outpatient departments plus 20 percent.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004.
5307.1	<p><u>Pharmacy Fee Schedule</u></p> <p>AD to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.</p>	<ul style="list-style-type: none"> • Medi-Cal rates have been posted on the department's website to carry out provisions that rates are 100 percent of fees prescribed in Medi-Cal effective January 1, 2004. Website recently updated to reflect Medi-Cal changes to dispensing fees and approximately 7.8 percent reduction effective September 1, 2004, and to correct some errors. • The Division of Workers' Compensation (DWC) is in the process of identifying the appropriate experts to provide necessary expertise to develop a fee schedule for pharmaceuticals not covered by Medi-Cal.

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5307.1	<p><u>Official Medical Fee Schedule Shall Be Adjusted To Conform To Relevant Medicare/Medi-Cal Changes within 60 Days Of Changes</u> (except specified inpatient changes)</p>	<p>Statutes specify that changes can be implemented without regulations. DWC is exploring hiring and contracting options to obtain necessary expertise to monitor all Medicare changes for all schedules and post the applicable provisions to the DIR website.</p> <p>Order issued October 13, 2004, to update the Inpatient Hospital Fee Schedule effective for discharges on or after November 29, 2004, to conform to Medicare rate changes.</p>
5307.1	<p><u>Specified Schedules Not In Fee Schedule Until January 1, 2005</u></p> <p>(Skilled nursing facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)</p>	<p>RAND is contracted to provide technical assistance on the fee schedules and will outline some of the policy issues relating to adapting these new schedule for workers' compensation. Expect to move forward on these in early 2005.</p>
5307.1	<p><u>Miscellaneous Medicare Fee Schedules</u></p>	<p>Adopted emergency regulations effective January 2, 2004, incorporating Medicare's Ambulance, Laboratory and Pathology, and Durable Medical Equipment Prosthetics Orthotics Supplies fee schedules. Rulemaking on permanent regulation completed and rulemaking file was submitted to OAL on April 30, 2004. The regulation was approved by OAL and filed with the Secretary of State. The effective date of the new regulations is July 1, 2004.</p>

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Other Mandates of AB 227 and SB 228

Other Mandates of AB227 and SB228:

Labor Code	Original Mandate/Tasks	Current Status per DWC
4903.5	<u>Medical Provider Lien Filing Fee</u>	Emergency regulations adopted effective January 1, 2004. Final rulemaking file submitted to OAL on April 29, 2004. The rulemaking was disapproved by OAL on June 15, 2004, because regulations were adopted by the AD rather than the Court Administrator. An Acting Court Administrator was appointed, reviewed the rulemaking record, ratified the rulemaking and adopted the rules. The rulemaking record was re-submitted to OAL and approved. The final regulations are effective June 30, 2004.
4658.5 of AB 227	<u>Supplemental Job Displacement Benefit</u>	Notice of Rulemaking sent to OAL on May 10, 2004. Public hearing was held July 8, 2004. Comments are being reviewed, and appropriate changes will be sent for a further 15-day public comment period.
3201.7	<u>Carve-out Program For All Industries</u>	Emergency regulations were adopted effective April 22, 2004. Notice of rulemaking sent to OAL on May 10, 2004. Public hearing was held July 8, 2004. Permanent regulation adopted effective October 4, 2004.
4062(b)	<u>Spinal Surgery Second Opinion Procedure</u>	Spinal Surgery Second Opinion emergency regulations were filed with the OAL on June 23, 2004, and became effective July 2, 2004. Notice of rulemaking for adoption of permanent regulations was issued in July 2004. Public hearing held September 21, 2004. Notice of modification of proposal sent to public for 15-day comment period, which ends on October 28, 2004. Completed rulemaking record will be submitted to OAL on October 29, 2004.

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139.5 of AB 227	<u>Vocational Rehabilitation Repeal for Injuries On/After January 1, 2004</u>	Exception to Executive Order 2 for rulemaking to revise claim form and posting notices and time-of-hire pamphlet to delete vocational rehabilitation and insert supplemental job displacement benefit (SJDB) was granted by Finance in March 2004. The regulations for claim form and posting notice and time-of-hire pamphlet initiated pursuant to AB 749 needed a 15-day comment period to incorporate changes pursuant to AB 227 / SB 228. Complete rulemaking file submitted to OAL on May 21, 2004. Regulations were approved by OAL and became effective on August 1, 2004.
4610	<u>Utilization Review</u>	Regulations have been drafted and were posted on the DWC Forum website for three pre-rulemaking public comment periods. Comments are being reviewed and appropriate changes are being made to the draft. DWC intends to adopt emergency regulations.
4603.4	<u>Electronic Bill Payment Regulations</u> Regulations required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.	Pre-Rulemaking Public Meetings held in June, July, August and October 2004, followed by Notice of Rulemaking in early 2005.
5318	<u>Spinal Surgery Implantables/Hardware Reimbursement</u> Statute codified old regulation providing extra payment for hardware/implantables until AD adopts reimbursement regulation.	Seeking assistance from RAND to develop possible approaches to refine reimbursement methodology.
5307.27	<u>Medical Treatment Utilization Schedule</u>	DWC staff will review the recommendations of the CHSWC/DWC study by RAND after public comments are presented and reviewed in December 2004.

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	<u>Changes Without Regulatory Effect</u>	Preparation of various Rule 100 changes without regulatory effect to conform regulations to statutory changes is underway for filing with OAL by the end of 2004 or early 2005. These will cover changes resulting from elimination of the Industrial Medical Council, changes to the time frame for payment of medical bills, and the percentage of interest for late paid bills.

Senate Bill 899

The following Labor Code sections were modified by the passage of SB 899:

Labor Code	Statutory Mandate	Effective Date	Regulation Deadline	Current Status
Section 139.48	<u>Return-to-work Reimbursement Program for Workplace Modifications</u> (Statute specifies that it shall be implemented to the extent funds are available. The program is to be funded from Section 5814.6 business practice penalty and from funds transferred from WCARF in accordance with regulations of the AD.)	For injuries on or after July 1, 2004. Sunsets January 1, 2009.	No date specified.	Will initiate in 2005.
Section 4062.1	<u>Qualified Medical Evaluator Procedures</u> for Unrepresented Workers	April 19, 2004.	No date specified.	Draft regulations are being developed. Rulemaking process to begin shortly.

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Section 4062.2	<u>Qualified Medical Evaluator Procedures</u> for Represented Injured Workers	For injuries on or after January 1, 2005.	No date specified.	Draft regulations are being developed. Rulemaking process to begin shortly.
§4600	<u>Predesignation of Physician</u>	April 19, 2004. Sunsets April 30, 2007.	No date specified.	Will initiate action later this year or early next year.
Section 4603.2	<u>Physician Billing / Itemization of Services and Payment</u>	April 19, 2004.	No date specified.	Will initiate action later this year or early next year.
Section 4616	<u>Medical Provider Networks</u>	January 1, 2005.	November 1, 2004.	Two advisory committee meetings have been held. Regulations have been drafted and have been posted on the DWC website for two pre-rulemaking public comment periods. Filed regulatory package with OAL on October 22, 2004, for emergency adoption of regulations to be effective November 1, 2004.
Section 4616.4	<u>Independent Medical Review</u>	January 1, 2005.	No date specified.	Draft regulations are being developed. Submitted regulatory package to OAL in December 2004, for emergency adoption of regulations to be effective January 1, 2005.

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Section 4658 and Section 4658.1	<u>Offer of Regular, Modified, or Alternate Work in Relation to 15 Percent Increase or Decrease of Permanent Disability (PD) Indemnity</u>	For injuries on or after effective date of revised PD Rating Schedule and effective for all dates of injury if no report issued indicating PD, and if no 4061 notice required	No date specified.	Will develop regulations and initiate rulemaking action in 2005.
Section 4660	<u>Permanent Disability Rating Schedule Revision</u>	For all dates of injury if no report issued indicating PD and if no 4061 notice required.	January 1, 2005.	DWC has contracted with RAND for expedited study to meet the January 1, 2005, effective date. Study is underway and staff members are working on the project. Advisory group meetings with the public were held in July and September 2004. Emergency regulations will be effective January 1, 2005.
Section 5402	<u>Requirement for Employer to Provide Up to \$10,000 in Medical Treatment Until Claim is Accepted or Rejected</u>	April 19, 2004.	No date specified.	Will initiate action in 2005.

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Section 5814.6	<u>Penalty for Business Practice of Unreasonable Delay in Payment of Compensation</u>	Operative June 1, 2004.	No date specified.	Draft regulations were posted to the DWC Forum website for pre-rulemaking public comment period. Advisory group will be established to address comments and provide input to DWC. Will initiate rulemaking action in 2005.

DIVISION OF WORKERS' COMPENSATION
2004 Rulemaking Calendar - Other Than Reform Regulations

Labor Code	Subject Matter of Regulation	Current Status
Section 138.6	<u>Workers' Compensation Information System</u> , adoption of updated implementation guides and medical data collection implementation guide.	Met with advisory committee/task force on Workers' Compensation Information System (WCIS) in May and June 2004, and thereafter holding bi-weekly conference call meetings of the task force. Rulemaking will be initiated in early 2005.
Sections 124, 127.5, 5307, Civil Code Sections 54, 54.1, 54.8 Govt. Code Section 11135, Americans With Disabilities Act [42 USC 12131-12134, 28 CFR 35.130.]	<u>Workers' Compensation Program Access for Persons With Disabilities</u> , provide procedures for requesting accommodation and for appealing denial of accommodation.	Draft of regulation was posted on the DWC Forum website in 2003. Further process deferred to 2005 due to press of reform priorities.